



Fairhaven Planning & Economic Development 40 Center Street, Fairhaven, Massachusetts 02719

Proposed Bylaw Amendment: Short Term Rentals Staff Report: November 4, 2020 –

1. DESCRIPTION

- **Proposal:** Consider a general bylaw to allow and regulate Short Term Rentals (STR).
- **Purpose: (of a bylaw regulating Short Term Rentals)**
 - Provide for the orderly operation of short-term rentals within the Town and prevent negative impacts on neighborhood character, housing availability, house prices, availability of long-term rental units and infrastructure services such as septic, parking, access, fire codes, building code enforcement and snow removal.
 - Ensure relevant health, safety, building, wiring, and fire standards are met at STR;
 - Provide a process through which certain premises and rooms within such premises, not otherwise regulated and licensed as lodging houses or bed and breakfasts, may be registered with and regulated by the Town as “short-term rentals” and by which neighbors can be informed.
- **History:**
 - In 2018, Massachusetts passed Chapter 337 “An Act Regulating and Insuring Short-Term Rentals.” The Law went into effect on July 1, 2019.
 - The Town of Fairhaven has had a Hotel Rooms Occupancy Tax since the early 1990’s. The Hotel Rooms Occupancy Tax is now 6%. This automatically applies to all Short Term Rentals as of July 1, 2019 based on the new law (Chapter 337).
 - The law requires property owners who want to rent short-term rentals to: Register with the Department of Revenue (DOR); Collect state room occupancy tax; File lodging tax returns monthly; Maintain \$1 million in liability insurance (unless using online platform with same); Inform their insurance provider that they will be operating a vacation rental.
 - The law provides the Town with the ability to impose an additional 3% Community Impact Fee.
 - Currently in Fairhaven a Bed and Breakfast may be allowed by Special Permit in the RR, RA, RB, RC, B, I AG, MU, and WRP Districts. PB is the SPGA in RC, B, I, MU and WRP.
 - Most Bed and Breakfasts and Online Short-Term Rentals (STR) are in the RA and RR Districts.
 - Non-family Accommodations, which includes “...lodging houses, guesthouses, tourist homes, dormitories or similar accommodations” are not allowed in RA and RR Districts.
 - Storage of a camper or utility trailer for more than 48 hours (consecutively), whether occupied or not, requires a Special Permit from the ZBA.
 - Taking of Boarders is allowed by right in most Districts (Not MU or WRP) but is not defined.
- **Key Issues with Developing a Short Term Rental Bylaw:**
 - Where, if anywhere, in Town could Short Term Rentals be allowed to operate?
 - How many calendar days per year would a unit be allowed to be rented for?
 - How many units can one owner, wholly or partially, maintain in the Town?
 - Should a Short Term Rental only be allowed in structures in which one unit is owner-occupied?
 - How many occupants would be allowed per rental?
 - How to enforce compliance and establishment of penalties for non-compliance.
 - Should there be a cap on the number of units allowed in Town at one time?

- Fees, registration renewal, transferability, listing, posting, contact information, response plan,
- Complaint process
- **WHO:** According to the State Department of Revenue (DOR) Division of Local Services (DLS) Data Bank 57 properties are currently registered as Short Term Rentals (STR) in Fairhaven.
 - Most appear to be located on Sciticut Neck, West Island or south of Center Street in the RA or RR District. There is a new statewide public registry listing short-term rentals (STR) which does not provide taxpayer name or address and can be shared publicly:
<https://www.mass.gov/info-details/public-registry-of-lodging-operators#about-the-registry->
- **WHAT: A Town may regulate Short Term Rentals in a number of ways.** In 2019, the State adopted Chapter 64G, Section 14 to Title IX Taxation, which allows a Town to adopt a bylaw to regulate operators of Short Term Rentals including location, class of operators, the number of local permits per operator and the number of days a person may rent out an accommodation in a calendar year. The town can require operators to demonstrate that all such properties are up to date with all codes and not currently in violation.
 - **Chapter 64G §(i):** “Regulate the existence or location of operators ... within the city or... town, including regulating the class of operators and number of local licenses or permits issued to operators under this section and the number of days a person may operate and rent out an accommodation in a calendar year;
 - **Chapter 64G §(ii):** “Require the licensing or registration of operators within the city or town; provided, however, that a city or town may: (A) accept a certificate of registration issued to an operator ... in lieu of requiring an operator to obtain a local license ...; or (B) issue a provisional license or registration to permit... (on a) temporary or seasonal basis;”
 - **Chapter 64G §(iii):** “Require operators to demonstrate that any properties or premises controlled, occupied, operated, managed or used as accommodations subject to the excise under this chapter are not subject to any outstanding building, electrical, plumbing, mechanical, fire, health, housing or zoning code enforcement, including any notices of violation, notices to cure, orders of abatement, cease & desist orders or correction notices;”
 - **Chapter 64G §(iv):** “Require properties or premises controlled, occupied, operated, managed or used by operators as an accommodation subject to the excise under this chapter to undergo health and safety inspections; provided, however, that the cost of any inspection ... paid by the operator ... provided further, that after any initial health and safety inspection, the city or town may determine the frequency of any subsequent inspections;”
 - **Chapter 64G §(v):** “Establish a civil penalty for violation of ... by-law enacted pursuant to this section; provided, however, that... the town that suspends or terminates an operator's right to operate ... shall notify the commissioner of revenue of the suspension or termination;”
 - **Chapter 64G §(vi):** “establish a reasonable fee to cover the costs associated with the local administration and enforcement of regulating operators and accommodations.”
- **WHY:** Increasing transient rentals can quickly transform a residential neighborhood. Speculators do not look at a house as a home but as an income generating property. The rise in transient rentals across the country due to online platforms has created impacts on house prices, availability of long-term rental units, neighborhood character and infrastructure services. Short Term Rentals, if allowed, would have to abide by most of the rules other innkeepers and hotel operators have to abide by with respect to licensing, registration, health and safety inspection and taxes. STR can be a good way to accommodate tourists, especially in a Town without many hotels, as long as there are regulations in place, and they

are enforced, to prevent the potential negative impacts mentioned above. Non-occupant owners of STR may be tempted to maximize the number of rentals and days rented, turning a home into a commercial property or party house.

- **Definitions** –

- **“BED-AND-BREAKFAST HOME” (198-33)**; A private, owner occupied house where three or fewer rooms are let, an individual's stay is not more than three consecutive nights and a breakfast is included in the rent. *Note: State Chapter 337 adds, “reserved in advance”.*
- **“Bed and breakfast establishment” (State Chapter 337)**: a private owner-occupied house where not less than 4 rooms are let, a breakfast is included in the rent and all accommodations are reserved in advance.
- **NONFAMILY ACCOMMODATIONS (198-33); Boardinghouses, lodging houses, guesthouses, tourist homes, dormitories or similar accommodations.** Accommodations shall be considered hotels or motels if having a sign in excess of two square feet or other departure from residential character or if having specified term of residence less than one week, except where there is a resident family on the premises and accommodations for fewer than 10 nonresidents. Accommodations having individual kitchen facilities (two or more of the following: stove, refrigerator, sink) shall be considered dwelling units. [Added 4-16-1975 ATM by Art. 57].
- **DWELLING UNIT (198-33)**; Quarters for a single family.
- **CAMPER (198-33)**; A portable dwelling eligible to be registered and insured for highway use, designed to be used for travel, recreation and vacation uses, but not for permanent residence; includes equipment commonly called travel trailers, pickup coaches or campers, motorized campers and tent trailers, but not mobile homes.
- **MOBILE HOME** - A movable or portable dwelling built on a chassis, connected to utilities and designed without necessity of a permanent foundation for year round living.
- **“Hosting platform” (State Chapter 337)**: a service through a digital platform, third-party website, software, online-enabled application, mobile phone application or some other, similar electronic process that allows: (i) an operator to advertise, list or offer the use of an accommodation subject to the excise under this chapter in exchange for rent; (ii) an operator to collect the payment of rent on an accommodation; and (iii) a person to arrange, book, reserve or rent an accommodation.
- **“Intermediary” (State Chapter 337)**: A person or entity, other than an operator, that facilitates the sale, use or possession of an occupancy and charges a room charge to the general public; provided, however, that the term “facilitates” shall include a person or entity that brokers, coordinates or in any other way arranges for the purchase, sale, use or possession of occupancies by the general public; provided further, that the term “intermediary” shall include a hosting platform and operator’s agent.”
- **“Occupancy” (State Chapter 337)**: the use or possession ... of a room ... in a short term rental ... for a period of not more than 31 consecutive calendar days...”
- **“Owner”**: Any Person, individual, partnership, trust or association, with or without transferable shares, joint stock company, a corporation which is not publicly traded, society, club, firm, organization, institution, estate, receiver, trustee, assignee or referee any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any other combination of individuals, directly or indirectly or through any agent, employee, stockholder, officer or other person or any subsidiary whatsoever acting as a unit, who alone or severally with others has legal or equitable title or a beneficial interest in any dwelling unit

including a mortgagee in possession; or agent, trustee or other person appointed by the courts.

- o **“Professionally-managed unit”** (State Chapter 337): 1 of 2 or more short-term rental units that are located in the same city or town, operated by the same operator and are not located within single-family, 2-family or 3-family dwelling including the operator’s primary residence.
- o **“Short-term rental”** (State Chapter 337): An owner-occupied, tenant-occupied or non-owner occupied property including, but not limited to, an apartment, house, cottage, condominium or a furnished accommodation that is not a hotel, motel, lodging house or bed and breakfast establishment, where: (i) at least 1 room or unit is rented to an occupant or sub-occupant; and (ii) all accommodations are reserved in advance; provided however, that a private owner-occupied property shall be considered a single unit if leased/rented as such.
- o Short Term Rentals do not apply to properties that are rented for not more than 14 days in a calendar year and those who charge less than \$15 a day rent.

Current Zoning Use Regulation Schedule relative to rentals:

Activity or Use	RR & RA	RB	RC	P	B	I	AG	MU ¹⁴	WRP ¹⁶
Non-family accommodations	N	A	A	N	A	A	N	A	N
Motel or hotel	N	N	N	N	A	A	N	A	A
Accessory Apt. to a business	N	N	N	N	A	A	N	Y	Y
Accessory Apt./ In-law Apt	A	A	A	N	N	N	A	Y	Y
Bed & breakfast home	A	A	A	N	A ¹²	A ¹²	A	A	A
Taking of boarders	Y	Y	Y	N	Y	Y	N	Y	Y
Storage of camper or utility trailer ⁸	Y	Y	Y	Y	Y	Y	Y	N	N

Zoning Board of Appeals shall be the SPGA for (yellow) & The Planning Board shall be the SPGA for (green)

⁸ Provided that it is not stored within a required front yard, and further provided that it is not occupied more than forty-eight (48) hours consecutively. Storage of a mobile home, whether occupied or not, or longer term occupancy of a camper requires a special permit from the Zoning Board of Appeals and is not considered a customary accessory use to a residential structure.

¹² Provided that the home has been legally used and occupied as a residential home for a minimum period of one year.

Bylaw Basics - Short Term Rental Bylaws include the following:

- **Purpose;**
- **Definitions;**
- **Application and Registration (required annually)** – All STR shall be registered with detailed information supplied in the application. No Owner shall rent, or offer to rent, any Short Term Rental prior to registering with the Town. No tenant shall sub-let a Short Term Rental under any circumstances. Annual registration will include review of citations and/or complaints.
- **Limits on Number of Registrations per Owner:** A maximum of X Short Term Rental registrations shall be issued per Owner;
- **Fees:**
- **Non-Transferability:**
- **Compliance:** A dwelling used as a Short Term Rental shall be in compliance with the provisions of all state and local health and safety laws, building codes and all applicable federal, state and local laws and regulations, including, but not limited to, Noise, Storage of Garbage and Refuse, the Fair Housing Act, and all other regulations applicable to residential dwellings.
- **Publication of Registration information:** The name and contact information of the Operator and the Operator’s Agent, if different from the Operator, who is able to respond in person to any issues or emergencies that arise during occupancy within one (1) hour of contact by the Town to complaints regarding the operation of the Short Term Rental. Contact information must include a telephone number that is available 24 hours per day, 7 days a week to Short Term Rental Occupants and the public safety agencies. This shall be included in the application for a Short Term Rental Registration and shall be posted conspicuously within the rental unit.
- **Good Neighbor Information:** The Town shall provide information to each registered Operator summarizing the regulations for short-term rentals. This will include, but shall not be limited to the name and 24-hour contact information of the STR, requirements for trash removal, occupancy requirements, parking, and noise restrictions. The Operator shall provide occupants a copy of the information; and post the information, along with the Short Term Rental Registration and contact information, in a conspicuous location within the Short Term Rental.
- **Trash Removal.** The STR Operator shall be responsible for ensuring that household trash is removed from the premises immediately after Occupancy is concluded or once per week, whichever is more frequent.
- **Occupancy Requirements:** The maximum number of Occupants in a Short Term Rental shall be two per bedroom, plus an additional two.
- **Smoke detectors,** carbon monoxide alarms and multi-purpose fire extinguisher on each floor.
- **Keeping of Register:** The Operator or Operator’s Agent shall be responsible for keeping a register containing the name of the Occupant who is the leaseholder, total number of occupants, and dates of occupancy. The register shall be retained for a period of two (2) years and shall be made available upon request to the Town, police, or other duly appointed or authorized code compliance staff of the Town of Fairhaven.
- **Applicability/Ineligible Units:** The following are not eligible to be rented or offered to rent as Short Term Rentals: Those subject to affordability covenants, or that are otherwise subject to housing or rental assistance under local, state, or federal law. Dwellings subject to any requirement of local, state, or federal law that prohibits the leasing or subleasing of the unit.

Dwellings that are the subject of any outstanding building, sanitary, zoning, or fire code violations, orders of abatement, or stop work orders. Properties designated as Problem Properties.

- **Failure to Pay Taxes:** Failure of a Person to comply with this requirement shall be cause, after notice and hearing pursuant to the requirements of G.L. c. 40, § 57, for denial, suspension, amendment, or revocation of a Short Term Rental Registration for any and all property in which the person holds a direct or indirect ownership interest,
- **Complaint Process:** A complaint process shall be developed for those alleging that a Short Term Rental is in violation of this Chapter or any applicable law, code or regulation that may be filed with Building and Zoning Department.
- **Offering an Ineligible Unit as a Short Term Rental:** Any person who offers a unit as a Short Term Rental, where such unit is not an eligible Dwelling Unit or is not registered, may be fined in accordance with the fine schedule herein on a per violation per day basis. Each day's failure to comply with notice of violation or any other order constitutes a separate violation.
- **Failure to Comply with Notice of Violation:** Any person who fails to comply with any notice of violation or other order issued pursuant to this section by the Commissioner or a designee for a violation of any provision of this section may be fined in accordance with the fine schedule herein on a per violation per day basis. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation.
- **Right to Hearing:** A person upon whom a notice of violation has been served may request a hearing by filing a written petition requesting a hearing on the matter with the Building and Zoning Department within fourteen days after the day the notice of violation was served. Upon receipt of a petition for hearing, the Building and Zoning Department shall notify the complainant of the place, date and time of the hearing.
- **Penalties:** Any person who violates any provision of this chapter may be subject to a fine in accordance with the following:.. Each day a violation exists constitutes a separate offense.
- **Enforcement:** The Town may enforce the provisions of this chapter by any or all of the following: the noncriminal disposition process of M.G.L. c. 40, s. 21D; by seeking to restrain a violation by injunction; and by filing a complaint in any court of competent jurisdiction.

2. **Choices**

- **Enforce existing laws.** Need to determine if an STR is a Bed and Breakfast or Non-Family Accommodation.
 - If an STR is determined to be a Non-Family Accommodation then almost all need to be informed that they are operating illegally and need to cease.
 - If an STR is determined to be a Bed and Breakfast then they need a Special Permit from the SPGA of their zoning district. Most will be through the ZBA in the RR and RA Districts
- **Create a new general Bylaw** specifically for Short-Term Rentals:
 - Determine which zoning Districts in which they may operate;
 - Determine how many days per calendar year they may be allowed to operate;
 - Determine how many STR units a single entity may operate;
 - Determine if the permit to operate an STR requires a public hearing or just notice.
 - Fill in details listed above such as fees, fines, and local registration.